STATE OF MICHIGAN
IN THE SUPREME COURT

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

Supreme Court
No. 150643

BOBAN TEMELKOSKI,

Defendant-Appellant.

Court of Appeals No. 313670
Third Judicial Circuit No: 94-000424-FH
Hon. James R. Chylinski

PLAINTIFF-APPELLEE'S SUPPLEMENTAL BRIEF

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TABLE OF CONTENTS

INDEX OF AUTHORITIES

FEDERAL CASES

STATE CASES

I.

Michigan courts are bound by decisions of the United States Supreme Court interpreting federal constitutional law but are not bound by decisions of lower federal courts or other states. Here, the Sixth Circuit Court of Appeals decision holding that SORA constitutes punishment and violates the prohibition against imposing ex post facto laws ignores the overwhelming weight of authority holding that sex offender registration laws do not constitute punishment. This Court is not bound by the Sixth Circuit Court of Appeals decision and should not adopt its reasoning.

In its brief on appeal, Plaintiff Appellee relied on *John Does 1-4 and Mary Doe v Snyder, et al*, which held, *inter alia,* that Michigan's Sex Offender Registration Act ("SORA") did not violate the federal constitutional guarantee against the imposition of ex post facto laws or the deprivation of due process.[1] On August 25, 2016, the Sixth Circuit Court of Appeals reversed the district court decision and held that SORA constituted punishment and violated the constitutional prohibition against ex post facto law.[2]

Although this Court is not obligated to follow the Sixth Circuit's opinion, it may consider it as persuasive authority.[3] Plaintiff Appellee urges this Court not to follow the reasoning adopted by the Sixth Circuit opinion because it is contrary to the overwhelming weight of federal and state authority, including its own previous opinions, holding that sex offender registration does not constitute punishment. Every other federal circuit court of appeals that has addressed this issue has

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[1] 932 F Supp 2d 803, 811 (ED Mich, 2013).

[2] *John Does 1-4 and Mary Doe v Snyder, et al*, 834 F3d 696, 705-706 (CA 6, 2016), rehearing den September 15, 2016.

[3] *People v Victor*, 287 Mich 506, 548 (1993).

held that the federal and other state sex offender registration statutes imposing registration requirements and residency restrictions similar to those imposed by SORA do not constitute punishment.[4] At least 15 state supreme courts have also concluded that their sex offender registration statutes do not constitute punishment.[5] Moreover, our Michigan Court of Appeals has upheld SORA on five separate occasions.[6]

The Sixth Circuit does not attempt to distinguish or even acknowledge this contrary authority, including cases addressing sex offender registration statutes involving diversionary statutes and privacy issues involving juveniles and youthful offenders. In *John Does 1-4,* the Sixth Circuit

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[4]*United States v Parks,* (CA 1, 2012)(federal SORNA); *Doe v Cuomo,* 755 F3d 105, 112 (CA 2, 2014)(New York law); *Doe v Pataki,* 120 F3d 1263, 1266 (CA 2, 1997)(New York); *EB v Verniero,* 119 F3d 1077, 1105 (CA 3, 1997)(New Jersey); *United States v Under Seal,* 709 F3d 257, 263 (CA 4, 2013)(federal SORNA); *United States v Young*, 585 F3d 199, 201, 204-205 (CA 5)(federal SORNA); *Doe v Bredesen,* 507 F3d 998 (CA 6, 2007)(Tennessee); *United States v Leach*, 639 F3d 769, 773 (CA 7, 2011)(federal SORNA); *Weems v Little Rock Police Dep't*, 453 F3d 1010 (CA 8, 2006) (Arkansas); *Doe v Miller*, 405 F3d 700, 719 (CA 8, 2005) (Iowa); *ACLU of Nevada v Masto*, 670 F3d 1046, 1050, 1056–1057 (CA 9, 2012) (Nevada); *Hatton v Bonner*, 356 F3d 955, 964 (CA 9, 2003) (California); *Shaw v Patton*, 823 F3d 556, 571–572 (CA 10, 2016) (Oklahoma); *United States v Hinckley*, 550 F3d 926, 929, 937 (CA 10, 2008) (federal SORNA), abrogated on other grounds by *Reynolds v United States*, 132 S Ct 975 (2012); *United States v WBH*, 664 F3d 848, 852, 855, 857–858 (CA 11, 2011) (federal SORNA).

[5]*See State v Boche*, 885 NW.2d 523 (NE, 2016); *People v Mosley*, 344 P3d 788, 799 (CA, 2015); *State v Trotter*, 330 P3d 1267, 1276 (UT, 2014); *Kammerer v State*, 322 P3d 827, 834–836 (WY, 2014); *People v Gravino*, 928 NE2d 1048, 1054–1055 (NY, 2010); *Ward v State*, 315 SW3d 461 (TN, 2010); *Commonwealth v Leidig*, 956 A2d 399, 404–406 (PA, 2008); *Anderson v State*, 182 SW3d 914, 918 (Tex Crim App 2006); *State v Seering*, 701 NW2d 655, 668 (IA, 2005); *RW v Sanders*, 168 SW3d 65, 70 (MO, 2005); *Foo v State*, 102 P3d 346, 357 (HI, 2004); *State v Moore*, 86 P3d 635, 641–643 (NM, 2004); *State v Partlow*, 840 So2d 1040, 1043 (FL, 2003); *Kaiser v State*, 641 NW2d 900, 905–907 (MN, 2002), superseded by statute as stated in *State v Jones*, 729 NW2d 1 (MN, 2007); *Nollette v State*, 46 P3d 87, 90 (NV, 2002); *State v Bollig*, 605 NW2d 199, 206 (WI, 2000).

[6]*People v Temelkoski*, 307 Mich App 241, 260-270 (2014); *People v Tucker*, 312 Mich App 645, 681 (2015); *People v Golba,* 273 Mich App 603, 620 (2007); *People v Pennington*, 240 Mich App 188, 196 (2000); *In re Ayres*, 239 Mich App 8, 19 (1999).

reaches its holding as if though it is writing on a blank slate, unencumbered by its own precedent, United States Supreme Court precedent, and jurisprudential principles involving separation of powers and sovereignty.

Instead of considering the constitutional challenges to SORA in the context of this well-defined body of caselaw and well-established jurisprudential considerations, the Sixth Circuit relies on law review articles and social science. Indeed, in ignoring the weight of authority that concludes that sex offender registration schemes like SORA are not punitive, the Sixth Circuit acts as a super legislature and substitutes its own factual findings and policy judgments for that of the Michigan Legislature and the People of the State of Michigan.

Respectfully submitted,

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